

October 20, 2004

D.T.E. 03-39-A

Petition of Towns of Aquinnah, Barnstable, Bourne, Brewster, Chatham, Chilmark, Dennis, Eastham, Edgartown, Falmouth, Harwich, Mashpee, Oak Bluffs, Orleans, Provincetown, Sandwich, Tisbury, Truro, Wellfleet, West Tisbury, Yarmouth, and the Counties of Barnstable and Dukes, acting together as the Cape Light Compact, for certification of its Energy Efficiency Plan for the calendar years 2003 through 2007, by the Department of Telecommunications and Energy, pursuant to G.L. c. 164, § 134(b).

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ORDER ON MOTION FOR RECONSIDERATION

APPEARANCES: Jeffrey M. Bernstein, Esq.  
Cristin L. Rothfuss, Esq.  
Bernstein, Cushner & Kimmell, P.C.  
585 Boylston Street, Suite 200  
Boston, Massachusetts 02116  
FOR: THE CAPE LIGHT COMPACT

## I. INTRODUCTION

On March 28, 2003, the Towns of Aquinnah, Barnstable, Bourne, Brewster, Chatham, Chilmark, Dennis, Eastham, Edgartown, Falmouth, Harwich, Mashpee, Oak Bluffs, Orleans, Provincetown, Sandwich, Tisbury, Truro, Wellfleet, West Tisbury, Yarmouth, and the Counties of Barnstable and Dukes, acting together as the Cape Light Compact (“Compact”) filed with the Department of Telecommunications and Energy (“Department”) its Energy Efficiency Plan (“Plan”) covering calendar years 2003 through 2007. The Compact filed the Plan pursuant to G.L. c. 25, § 19, G.L. c. 25A, § 11G, G.L. c. 164, § 134(b), and Cape Light Compact, D.T.E. 00-47-C (2001). The Department docketed the matter as D.T.E. 03-39.

On October 23, 2003, the Department certified that the Compact’s Plan, with the exception of the Residential New Construction Demo Program (“RNC Demo”), is consistent with the state energy efficiency goals. Cape Light Compact, D.T.E. 03-39, at 17 (2003). The Department denied the RNC Demo because it failed to meet the Department’s cost-effectiveness test established in Order Promulgating Final Guidelines to Evaluate and Approve Energy Efficiency Programs, D.T.E. 98-100, Att. 1(2000) (“DTE Guidelines”).<sup>1</sup> D.T.E. 03-39, at 10, 17. On November 12, 2003, the Compact filed a motion seeking reconsideration of the portion of the Department’s Order denying the RNC Demo (“Motion”).

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<sup>1</sup> The DTE Guidelines apply to all administrators of energy efficiency programs, including the Compact. D.T.E. 98-100, at 12. The DTE Guidelines set forth, among other things, the criteria and methods that the Department would employ to determine whether a proposed energy efficiency program is cost-effective. DTE Guidelines at § 3. However, the Compact has the opportunity to propose alternative methods of determining cost-effectiveness. DTE Guidelines at § 1.

## II. THE MOTION

The Motion requests that the Department reconsider its denial of certification of the RNC Demo program as presented (Motion at 1). The Compact contends that, as a non-profit municipal aggregator, it is governed by different standards than those assessed on local distribution companies with respect to the development and implementation of energy efficiency programs (id. at 1-2). In addition, the Compact argues that even if it were subject to the same regulatory standards as local distribution companies, the RNC Demo is an appropriate investment and is in the public interest despite its benefit-cost (“B/C”) ratio of 0.55 (id. at 2).

The Compact asserts that G.L. c. 164, § 134(b) provides that “a municipality or group of municipalities” shall not be prohibited from “considering, adopting, enforcing, or in any other way administering an energy plan which does not comply with any such state-wide conservation goals so long as it does not violate the laws of the Commonwealth” (id. at 4, citing G.L. c. 164, § 134(b)). Therefore, the Compact contends that, as a group of municipalities acting together to aggregate the electrical load within its jurisdiction, it may implement the RNC Demo so long as it does not violate other state statutes (Motion at 2). The Compact argues that, although G.L. c. 25, § 19 states that energy efficiency programs must be “delivered in a cost-effective manner,” this language does not mandate disapproval of the RNC Demo, especially where the Compact does not have to comply with “state-wide conservation goals” pursuant to G.L. c. 164, § 134(b) (id. at 4).

The Compact states that because the RNC Demo is a pilot program, it should not be subjected to a strict cost-effectiveness standard because to do so would restrict the Compact from receiving empirical data that may help the Compact evolve its energy efficiency programs (id. at 8). The Compact contends that the RNC Demo is intended to serve small home developers, usually a lost opportunity market, and is budgeted at \$70,000 per year, or 1.1 percent of the Compact's total program budget (id. at 6-7). The Compact contends that despite failing to meet the cost-effectiveness test for this program, the RNC Demo is consistent with the Division of Energy Resources' ("DOER") goal of ensuring that energy efficiency funds are distributed equitably among customer classes (id. at 7).

The Compact explains that, in response to the Department's Order, the Compact has performed an updated B/C analysis, and calculated a new B/C ratio (id. at 9). The Compact contends that there are many energy efficiency measures likely to be implemented that were not accounted for in the original B/C analysis (id.). The Compact alleges that the updated B/C analysis assumes that participating homes will achieve electricity savings as a result of not having to install central air conditioning (id. at 10). Further, the Compact asserts that there are several non-energy benefits associated with the RNC Demo that were not originally accounted for in its B/C analysis (id.). Based on these amended calculations, the Compact now estimates that the B/C ratio for the RNC Demo to be 0.75, up from the originally rejected B/C ratio of 0.55 (id. at 12).

Lastly, the Compact asserts that Massachusetts utilities frequently include pilot programs in their energy efficiency plans without calculating an independent B/C ratio (id.).

The Compact contends that if it were to adopt this approach and combine the RNC Demo with the rest of its RNC program, the B/C ratio for the RNC program would be reduced from 1.43 to 1.21, still above the 1.00 cost-effectiveness threshold (id.).

### III. STANDARD OF REVIEW

The Department's policy on reconsideration is well settled. Reconsideration of previously decided issues is granted only when extraordinary circumstances dictate that we take a fresh look at the record for the express purpose of substantively modifying a decision reached after review and deliberation. North Attleboro Gas Company, D.P.U. 94-130-B at 2 (1995); Boston Edison Company, D.P.U. 90-270-A at 2-3 (1991); Western Massachusetts Electric Company, D.P.U. 558-A at 2 (1987).

A motion for reconsideration should bring to light previously unknown or undisclosed facts that would have a significant impact upon the decision already rendered. It should not attempt to reargue issues considered and decided in the main case. Commonwealth Electric Company, D.P.U. 92-3C-1A at 3-6 (1995); Boston Edison Company, D.P.U. 90-270-A at 3 (1991); Boston Edison Company, D.P.U. 1350-A at 4 (1983). The Department has denied reconsideration when the request rests on an issue or updated information presented for the first time in the motion for reconsideration. Western Massachusetts Electric Company, D.P.U. 85-270-C at 18-20 (1987); but see Western Massachusetts Electric Company, D.P.U. 86-280-A at 16-18 (1987). Alternatively, a motion for reconsideration may be based on the argument that the Department's treatment of an issue was the result of mistake or inadvertence. Massachusetts Electric Company, D.P.U. 90-261-B at 7 (1991); New England

Telephone and Telegraph Company, D.P.U. 86-33-J at 2 (1989); Boston Edison Company, D.P.U. 1350-A at 5 (1983).

#### IV. ANALYSIS AND FINDINGS

The Compact's motion for reconsideration is based on the claims that: (1) the RNC Demo will provide valuable information on how to improve the efficiency of new home construction; (2) a recalculation of the B/C ratio will yield a substantial improvement over the B/C ratio provided in the original plan; and (3) even though G.L. c. 25, § 19 states that energy efficiency programs must be "delivered in a cost-effective manner," this does not mandate disapproval of the RNC Demo, since the Compact does not have to comply with "state-wide conservation goals " pursuant to G.L. c. 164, § 134(b).

The Department considered the Compact's record evidence on the information value of the RNC Demo (see Plan Tab 3, at 5-8). The Department is reluctant to approve the use of customer funds to support a program that appears unlikely to achieve the requisite cost-effectiveness over time. Massachusetts Electric Company, D.T.E. 03-8, at 18-19 (2004). The Compact's evidence that the RNC Demo program may be instructive does not offset our concern that the benefits might not exceed costs when the program was monitored and evaluated in the post-implementation phase.<sup>2</sup> D.T.E. 03-39, at 11. We reject the Compact's

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<sup>2</sup> The Department is charged with determining the cost-effectiveness of an electric company's energy efficiency programs. G.L. c. 25, § 19, G.L. c. 25A, § 11G; DTE Guidelines at §§ 3, 4. First, the Department reviews the pre-implementation cost-effectiveness of an electric company's energy efficiency programs. DTE Guidelines at §§ 3, 4. After implementation, the Department must again review these energy efficiency programs to determine their actual cost-effectiveness.

(continued...)

position on this issue because of this concern and because the Compact is rearguing an issue considered and decided in the underlying Order.

In its Motion, the Compact presented, for the first time, an updated B/C analysis and calculation of a new B/C ratio for the RNC Demo. No person may present additional evidence after having rested nor may any hearing be reopened after having been closed except upon motion and showing of good cause. 220 C.M.R. § 1.11 (3).<sup>3</sup> See Boston Gas Company, D.P.U. 88-67 (Phase II) at 6-8 (1989). Further, the Department has denied reconsideration when the request rests on information presented for the first time in the motion for reconsideration. Bell Atlantic-Massachusetts et al., D.P.U./D.T.E. 96-73/74, 96-75, 96-80/81, 96-83, 96-94-Phase 4-M, at 9-10 (1999); Boston Gas Company, D.P.U. 96-50-C (Phase I) at 17-18 (1997). Therefore, we will not consider the Compact's evidence in the Motion regarding the newly calculated B/C ratio.

The Department found that the RNC Demo was inconsistent with the requirements of G.L. c. 25, § 19 and G.L. c. 25A § 11G. D.T.E. 03-39, at 10-12. The Compact argues that although G.L. c. 25, § 19 states that energy efficiency programs must be "delivered in a cost-effective manner," it does not mandate disapproval of the RNC Demo, since the Compact

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<sup>2</sup>(...continued)

G.L. c. 25A, § 11G; DTE Guidelines at §§ 3, 4.

<sup>3</sup> We note that the Compact had an opportunity before the close of the record to explain ways in which the B/C ratio for the RNC Demo might be increased (IR-DTE-1-6).

does not have to comply with “state-wide conservation goals,” pursuant to

G.L. c. 164, § 134B. Section 134(b) states in part that:

The municipality or group of municipalities shall not be prohibited from proposing for certification an energy plan which is more specific, detailed, or comprehensive or which covers additional subject areas than any such state-wide conservation goals. This subsection shall not prohibit a municipality or group of municipalities from considering, adopting, enforcing, or in any other way administering an energy plan which does not comply with any such state-wide conservation goals so long as it does not violate the laws of the commonwealth.

Section 134(b) does not authorize the Department to allow the Compact to implement non-cost effective energy efficiency programs. Moreover, G.L. c. 25, § 19 and G.L. c. 25A § 11G, require that the Department “shall ensure that [energy efficiency programs] are delivered in a cost-effective manner.”<sup>4</sup> The Compact itself acknowledged that delivering energy-efficiency programs cost-effectively is a “mandatory requirement that must be met in order to obtain ratepayer funding to implement energy efficiency programs” and that this requirement “will be applied on a pass-fail basis (Plan Tab 1, at 58).” See 225 C.M.R. § 11.03; Guidelines Supporting the Massachusetts Division of Energy Resources’ Energy Efficiency Oversight and Coordination Regulation 225 C.M.R. 11.00 at § 2 (“DOER

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<sup>4</sup> The Department recognizes that a properly structured pilot program can be an important source of technical and economic data. Such programs, with sufficient factual support, may be proposed for Department review. DTE Guidelines at §§ 1, 3, 4.2. The Compact may file an amendment to its Plan. The burden is on the Compact to demonstrate the compelling nature of its request. Id. at § 1(2).



Guidelines”); D.T.E. 03-39, at 15-16.<sup>5</sup> We conclude that rejecting the RNC Demo on the grounds that it was not cost-effective does not conflict with the requirements of Section 134(b) because the Department’s duty to “ensure that [energy efficiency programs] are delivered in a cost-effective manner” is a statutory mandate and not a “statewide energy conservation goal.” G.L. c. 25, § 19; G.L. c. 25A § 11G; G.L. c. 164, § 134(b).<sup>6</sup>

Upon consideration of the Motion and for the reasons noted above, we conclude that there are no extraordinary circumstances to require us to take a fresh look at the record for the purpose of substantively modifying our decision in D.T.E. 03-39. Accordingly, we deny the Motion.

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<sup>5</sup> The Compact also recognized that “the Department is required to “certify” that the proposed programs are cost-effective (Plan, App. A Tab 2, at 6 (Compact’s Memorandum on Procedures to Certify Energy Plan)).”

<sup>6</sup> DOER has the authority establish statewide energy conservation goals, which are set forth in the DOER Guidelines. G.L. c. 25A § 11G; 225 C.M.R. § 11.03. The Department must (1) certify that the Compact’s Plan is consistent with the DOER Guidelines and (2) ensure that the programs in the Plan are delivered in a cost-effective manner. G.L. c. 25, § 19; G.L. c. 164, § 134(b); see D.T.E. 03-39, at 2-5, 15-17.

V. ORDER

After review and consideration, it is

ORDERED: That the Motion of the Cape Light Compact for Reconsideration of the Department's Order in D.T.E. 03-39 is DENIED.

By Order of the Department,

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/s/  
Paul G. Afonso, Chairman

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/s/  
James Connelly, Commissioner

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/s/  
W. Robert Keating, Commissioner

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/s/  
Eugene J. Sullivan, Jr., Commissioner

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/s/  
Deirdre K. Manning, Commissioner